BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

'In the Matter of the Appeal Of)
)
TOMMY H. AND LEILA J. THOMAS)

For Appellants: Deloitte, Haskins & Sells
Certified Public Accountants

For Respondent: Allen R. Wildermuth
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Tommy H. and Leila 3. Thomas against a proposed assessment of personal income tax in the amount of $10,633.64 for the year 1978.

The principal issue is whether appellants Tommy H. and Leila J. Thomas were residents of California throughout 1978. If they were, we must also decide whether appellants are entitled to a deduction for away-from-home travel expenses.

Appellants are husband and wife. In October of 1977, Mr. Thomas was offered'the position of Buyer in Tehran, Iran, by Rockwell International ("Rockwell"). The 'letter offering him employment indicated the expectation that Mr. Thomas would make a significant contribution to the success of the company's program in Iran. While no formal written contract was apparently executed, the job commitment was for an initial period of two years with an optional extension period of one year. Appellants indicated that they had intended to exercise the extension option and to remain in Iran until October of 1980. Directly following the offer, Mrs. Thomas quit her job. Appellants sold their personal automobile and attempted to sell their mobile home. When these attempts proved unsuccessful, the motor home was placed in storage until a decision could be made with respect to its ultimate disposit'ion. Appellants shipped the bulk of their personal belongings to Iran at a cost of over $3,000, storing the remainder of their belongings in California. While they were in Iran, appellants retained ownership of their home in Norco, California, primarily as an investment due to the rapidly rising southern California real estate market.

In preparation for the move to Iran, appellants and their three minor children participated in a cultural orientation program. During that program, it was determined that the two daughters, then aged 17 and 15, would. encounter great difficulties in adjusting to the social restrictions placed upon women and young girls in the strict Moslem culture found in Iran. Accordingly, it was determined that they should remain in the family home in California under the supervision of the appellants' married daughter and her family. However, appellants' 13-year-old son was judged culturally adaptable and accompanied his parents to Iran.

As indicated above, appellants either shipped their-personal property to Iran or stored it in California. Therefore, their married daughter was obliged to furnish appellants' house herself. There is no indication that appellants charged their daughter rent or that they treated the property as investment real estate in their federal income tax return for 1978.

While in Iran, appellants maintained two California bank accounts and retained valid California driver's licenses. In addition, Mrs. Thomas was registered to vote in California during 1978, but this was solely due to the fact that she had registered in a prior year.

In Iran, appellants leased an apartment for one year with an option to extend for one additional year, purchased furniture, and enrolled their son in the Tehran American school. In addition, they obtained Iranian residency and work permits, established various social connections and utilized the services of Iranian professionals. Mrs. Thomas and her son vacationed in Cdlifornia for six weeks during the summer of 1978, staying with her daughters at the Norco house. They were joined there for two weeks by Mr. Thomas. All three returned to Iran in July of 1978. Due to political unrest, Mrs. Thomas and her son were forced to evacuate Iran in November of 1978, and Mr. Thomas followed in late December. Due to the continued instability in Iran, Mr. Thomas' commitment was cancelled. While numerous overseas employees of Rockwell were terminated or transferred to other states after completion of foreign assignments, Yr. Thomas was transferred to a position with Rockwell in California in 1979.

Respondent received information'that while appellants had filed a federal income tax return for 1978, they had not filed a California income tax return for that period., Respondent requested that appellants file a California return for 1978. Appellants contended that they were not required to file such a return because they were not residents of California. Based upon the information obtained from the federal government, respondent then issued a notice of proposed assessment which included various penalties. Appellants protested. Respondent waived the various penalties, but affirmed the assessment of the tax. This timely appeal followed.

Subdivision (a)(2) of Revenue and Taxation Code section 17014 defines the term "resident" to include "[e]very individual domiciled in this state who is outside the state for a temporary or transitory purpose." The parties appear to agree that appellants were domiciled in California throughout the year at issue. The precise question presented, therefore, is whether their absence from this state was for a temporary or transitory purpose.

Respondent's regulations indicate that whether a taxpayer's presence in or absence from California is for a temporary or transitory purpose is essentially a question of fact, to be determined by examining all the circumstances of each particular case. (Cal. Admin. Code, tit. 18, reg. 17014--17016(b).) The regulations go on to provide that, as a general rule:

> . . . [I]f an individual is simply passing through this State on his way to another state or country, or is here for a brief rest or vacation, or to complete a particular transaction, or to perform a particular contract., or fulfill a particular engagement, which will require his presence in this State for but a short period; he is in this State for temporary or transitory purposes, and will not be a resident by virtue of his presence here.
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> If, however, an individual is in this State to improve his health and his illness is of such a character as to require a relatively long or indefinite period to recuperate, or he is here for business purposes which will require a long or indefinite period to accomplish, or is employed in a position that may last permanently or indefinitely, or has retired from business and moved to California with no definite intention of leaving shortly thereafter, he is in this state for other than temporary or transitory purposes .... (Cal. Admin. Code, tit. 18, reg. 17014-17016(b).)

The examples listed in this regulation are equally relevant in assessing the purposes of a California domiciliary's absence from the state. (Appeal of George J. Sevcsik, Cal. St. Bd. of Equal., March 25, 1968.)

The regulations also reveal that the underlying theory of California's definition of "resident" is that the state where a person has his closest connections is the state of his residence. (Cal. Admin. Code, tit. 18, reg. 17014-17016(b).) Consistently with this regulation, we have held that the contacts which a taxpayer maintains in this and other states are important, objective indications of whether the taxpayer's presence in or absence from California was for a temporary or transitory purpose. (Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) In cases such as the present one, where a California domiciliary leaves

the state for business or employment purposes, we have considered it particularly relevant to determine whether the taxpayer substantially severed his California connections upon his departure and took steps to establish significant connections with his new place of abode, or whether he maintained his California connections in readiness for his return. (Compare Appeal of Richards L. and Kathleen K. Hardman, Cal. St. Bd. of Equal., Aug. 19, 1975, and Appeal of Christopher T. and Hoda A. Rand, Cal. St. Bd. of Equal., April 5, 1976, with Appeals of Nathan H. and Julia M. Juran, Cal. St. Bd. of Equal., Jan. 8, 1968, and Appeal of William and Mary Louise Oberholtzer, Cal. St. Bd. of Equal., April 5, 1976.)

In urging that appellants' absence from California was temporary or transitory in character, respondent relies principally upon the fact that appellants retained the ownership of the family house in Norco, California. However, retention of a house in California has not always led to the conclusion that taxpayers were California residents. (See Appeal of David A. and Frances W. Stevenson, Cal. St. Bd. of Equal., March 2, 1977; Appeal of Richards L. and Kathleen K. Hardman, supra.) Indeed, like the taxpayers in Appeal of Richards L. and Kathleen K. Hardman, supra, who did not sell their home because of the poor state of the real estate market, appellants had solid economic reasons for not selling their house in October of 1977. Because of the rapidly increasing value of southern California real estate, appellants felt that retention of the house would prove to be a good investment. However, respondent notes that the taxpayers in the Hardman and Stevenson cases leased their homes to unrelated third parties, whereas appellants permitted their married daughter to use their home. Thus, respondent argues that appellants maintained their California home in readiness for their return. (See Appeals of Nathan H. and Julia M. Juran, supra.) Indeed, respondent notes that on their vacation to California in the summer of 1978, appellants stayed with their married daughter in the California home. However, such a visit hardly can be equated to maintaining appellants' home in a state of availability or readiness as was found in the Juran case. In Juran, the house was not rented or apparently occupied by anyone else during the taxpayers' absence. During that time, the electricity was left on, the yard was kept up, and mail was delivered to the California address. Moreover, since the taxpayers in Juran lived at least part of the time in various hotels, it would appear that they did not ship or store their furniture. In contrast,

appellants either shipped or stored their furniture. In addition, the occupancy of the house by appellants' married daughter and her family made good economic sense since not only was that dauyhter a good tenant, but an inexpensive and safe guardian for appellants' 1'7 and 15 year old daughters. Moreover, the fact that appellants may not have treated the California property as income-producing property *in* their federal income tax return would not seem to be relevant to the issue here. Indeed, "[t]he time has not yet come when a parent must suddenly deal at arm's length with his children when they finish their education and start out in life." (Johnson v. United States, 254 F.Supp. 73, 77 (N.D. Tex. 1966).)

Nor do we think the fact that appellants permitted their minor daughters aged 17 and 15 to remain in California to finish school is determinative of whether their stay in Iran was for a temporary or transitory purpose. (See Appeal of William and Mary Louise Oberholtzer, supra.) Unlike the Oberholtzer case, whare leaving their only child, a minor daughter, in this state to finish her schooling was found to be an important indication that taxpayers"absence was for a temporary or transitory purpose, appellants did take their 13-year-old son with them to Iran. Moreover, there were cogent reasons for leaving the two daughters behind. There was a real concern that the young women would have trouble adjusting to the strict social requirements in a Moslem culture. In addition, the record indicates that the older girl would finish high school in the middle of the assignment. A Rockwell file dated September of 1977 indicated the company's concern that the return of the older daughter to the United States after graduation from high school might create significant difficulty, and could result in the premature return of the whole family. Accordingly, it would seem that the fact that the two older children were to remain in California to finish high school is actually indicative of appellants' intention to complete the assignmen-t in Iran and to be away from California for other than a temporary or transitory purpose.

We also note that appellants.severed many of their California connections upon their departure. They sold their personal automobile, and Mrs. Thomas quit her job. In addition, most of appellants' furniture was shipped to Iran. Rather than leaving the remainder of their personal property at their Norco home, appellants employed a long-term storage facility. Moreover, unlike the taxpayer in the Oberholtzer case, whose assignment in France was to last only as long as his services were

needed, Mr. Thomas had a job commitment of two years, with a possible extension for another year. Appellants also established contacts in Iran, such as leasing an apartment, purchasing furniture, enrolling their son in school, obtaining Iranian residency and work permits, establishing various social connections,, and utilizing the services of local professionals. While it is true that appellants retained some California contacts, notably maintaining two bank accounts and their investment in their Norco home, under the circumstances of this case, we do not believe that this is inconsistent with an intent and expectation to remain abroad for a long or indefinite period. (See Appeal of David A. and Frances W. Stevenson, supra; Appeal of Richards L. and Kathleen K. Hardman, supra.) Moreover, retention of their California driver's licenses and Mrs. Thomas' voter registration appears to be primarily a legacy of past action rather than an indication of current intent and expectations. Finally, the fact that the Iranian political climate required that appellants return to California before the full term of their commitment does not require a conclusion that their purposes in going to Iran were temporary or transitory in character. (See Appeal of Christopher T. and Hoda A. Rand, supra.)

For the above reasons, we conclude that appellants were outside this state for other than temporary or transitory purposes during their stay in Iran, and therefore, ceased to be California residents until their return. Accordingly, respondent's action must be reversed. Because of thisdecision, it is unnecessary to discuss the issue of traveling expenses.

Appeal of Tommy H. and Leila J. Thomas

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of 'Tommy H. and Leila J. Thomas against a proposed assessment of personal income tax in the amount of $10,633.64 for the year 1978, be and the same is hereby reversed.

Done at Sacramento, California, this 5t.h day of Aprii , 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

William M. Bennett , Chairman

Conway H. Collis , Member

Ernest J. .Dronenburg, Jr. , Member

Richard Nevins , Member

Walter Harvey* , Member

*For Kenneth Cory, per Government Code Section 7.9